

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

August 6, 2009

Joseph W. Benson, Esquire  
Andrew Ahern III, Esquire  
JOSEPH W. BENSON, P.A.  
1701 N. Market Street  
P.O. Box 248  
Wilmington, DE 19899

Barbara Anisko, Esquire  
Pamela M. Tobin, Esquire  
KAPLIN STEWARD MELOFF REITER  
AND STEIN, P.C.  
P.O. Box 3037  
Blue Bell, PA 19422-0765

Daniel F. Wolcott, Jr., Esquire  
Gregory A. Inskip, Esquire  
POTTER ANDERSON & CORROON, LLP  
P.O. Box 951  
Wilmington, DE 19899

**RE: Caldera Properties v. The Ridings Development, LLC, et al.  
Civil Action No. 07C-12-002**

Dear Counsel:

This is the Court's decision on the remaining post-trial ancillary motions to be resolved pursuant to the remand from the Supreme Court. The return of the case to the Supreme Court must be accomplished before August 24, 2009.

Plaintiff is seeking costs pursuant to Superior Court Civil Rule 54 and 10 Del. C. §5101. Ridings and Centex oppose the motion as being untimely and on the grounds that Caldera was not the prevailing party.

The Court issued its post-trial decision on May 29, 2009. Superior Court Civil Rule 54 requires an application for costs to be filed within ten (10) days. The Motion was filed on June 16, 2009 which is two (2) business days late.

Caldera subsequently filed a Motion seeking to enlarge the time permitted for the costs motion based upon "counsel's inadvertence in calendaring the deadline". The Court has discretion to enlarge the time for filing pursuant to Superior Court Civil Rule 6 for good cause shown. This case has been hard fought. I have endeavored to get to the substantive issues and will do so as to this

motion. I accept counsel's reason for filing two business days late and find it to be excusable neglect. This is a situation where there is no harm or prejudice to Ridings or Centex arising from Plaintiff's tardiness.

As to the merits, Defendants argue that the Court should determine Caldera was not the prevailing party. Defendants also argue that the Court's decision in denying the attorneys fee application should end the matter based upon the Court's prior reasoning.

The heart and soul of this litigation involved who was going to bear the costs of the sewer infrastructure for Phases II and III. This was an issue primarily outside of the contract; and, for that reason, I did not award attorneys' fees as may have been permitted by the contract.

The present motion is not based on the contract but on the pertinent rule and statute.

Caldera was the prevailing party as to the sewer infrastructure issue. Defendants do not contest the specifics of what is being requested. The Court costs, sheriff's fees, docket fees, and deposition costs are awarded in the amount of \$14,532.09.

**IT IS SO ORDERED.**

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj

cc: Prothonotary  
Gerald M. O'Rourke, Esquire  
Deborah J. Israel, Esquire and Cathy A. Hinger, Esquire  
William A. Denman, Esquire  
Sheldon K. Rennie, Esquire  
Edward J. Hayes  
Christopher J. Lamb, Esquire